

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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|---------------------------------|---|--------------------------------------|
| MARCUS SUAREZ, | : | CIVIL ACTION NO. 1:11-CV-1087 |
| | : | |
| Petitioner, | : | (Chief Judge Conner) |
| | : | |
| v. | : | |
| | : | |
| KENNETH CAMERON, et al., | : | |
| | : | |
| Respondents. | : | |

ORDER

AND NOW, this 11th day of August, 2014, upon consideration of the report of Chief Magistrate Judge Martin C. Carlson (Doc. 37), recommending the court deny the petition (Doc. 1) for a writ of habeas corpus filed by petitioner and state prisoner Marcus Suarez (“petitioner”) pursuant to 28 U.S.C. § 2254 and deny petitioner’s motion (Doc. 35) for summary judgment, wherein the magistrate judge concludes that petitioner cannot show an entitlement to habeas corpus relief because the state court’s factual findings regarding petitioner’s request for post-conviction relief are presumed to be correct, and because petitioner has not rebutted this presumption by clear and convincing evidence, (Doc. 37 at 7-19); see 28 U.S.C. § 2254(e)(1) (“In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.”), and, after an independent review of the record, the court in full agreement with the magistrate judge that petitioner has failed to overcome this presumption of correctness, and it appearing that neither party has objected to the

report, and that there is no clear error on the face of the record,¹ see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”), it is hereby ORDERED that:

1. The report of the magistrate judge (Doc. 37) is ADOPTED in its entirety.
2. Petitioner’s motion (Doc. 35) for summary judgment is DENIED.
3. The petition (Doc. 1) for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by petitioner Marcus Suarez is DENIED.
4. A certificate of appealability is DENIED. See RULES GOVERNING SECTION 2254 CASES 11(a).
5. The Clerk of Court shall CLOSE this case.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

¹ When parties fail to file timely objections to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to *de novo* review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court’s review is conducted under the “plain error” standard); Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998) (holding that the court’s review is limited to ascertaining whether there is “clear error on the face of the record”); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for “clear error”). The court has reviewed the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.